# STATE OF MICHIGAN

# COURT OF APPEALS

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In the Matter of SHAWNA L. HIGGINS, SHANNON SUE HIGGINS, and HARVEY DINSMOORE, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TRACY HIGGINS,

Respondent-Appellant,

and

ANGELO DINSMOORE

Respondent.

UNPUBLISHED
June 30, 2000

No. 220539
Tuscola Circuit Court
Family Division
LC No. 95-006149-NA

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In the Matter of ABBIE LYNN HIGGINS, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TRACY HIGGINS,

Respondent-Appellant.

No. 220541
Tuscola Circuit Court
Family Division
LC No. 97-006815-NA

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In the Matter of SHAWNA L. HIGGINS, SHANNON SUE HIGGINS, and HARVEY DINSMOORE, Minors.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANGELO DINSMOORE,

Respondent-Appellant,

and

TRACY HIGGINS,

Respondent.

No. 220584
Tuscola Circuit Court
Family Division
LC No. 95-006149-NA

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Before: Wilder, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

In Docket Nos. 220539 and 220584, respondents-appellants Tracy Higgins (Higgins) and Angelo Dinsmoore (Dinsmoore) appeal as of right the family court's order terminating their parental rights to the minor children, Shawna Higgins, Shannon Higgins, and Harvey Dinsmoore. In Docket No. 220541, respondent-appellant Higgins appeals as of right the family court's order terminating her parental rights to the minor child, Abbie Higgins. We affirm.

Both respondents, for the first time on appeal, argue that the family court erred in its exercise of subject matter jurisdiction. However, a party may not collaterally attack the family court's exercise of subject matter jurisdiction on appeal from the order terminating parental rights. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). A family court's exercise of its jurisdiction can be challenged only on direct appeal. *Hatcher*, *supra* at 439; *In re Foster*, 226 Mich App 348, 353; 573 NW2d 324 (1997). Here, respondents did not seek a direct appeal from the probate court order exercising jurisdiction. Accordingly, appellate review of this issue is precluded.

Higgins also argues that the family court abused its discretion in denying her oral motion to withdraw her no-contest plea to an allegation in the January 1998 petition concerning Shawna, Shannon and Harvey, which incorporated all of the substantiated allegations of neglect made against her in connection with a dismissed petition filed in 1995. Higgins alleges that she entered into a plea agreement in which petitioner promised it would return the children to Dinsmoore if she moved out of his house. Higgins claims that petitioner violated the plea agreement by failing to return the children to Dinsmoore after she moved out of his residence. We disagree.

The family court did not abuse its discretion by refusing to allow Higgins to withdraw her no-contest plea. While juvenile court proceedings need not conform to all of the requirements of a criminal proceeding, parents must be afforded essential elements of due process and fair treatment. *In re Zelzack*, 180 Mich App 117, 125; 446 NW2d 588 (1989). Where a prosecutor induces a plea of no-contest to allegations in a neglect petition by an unkept promise, the remedies are either specific performance or vacating the plea. *Id.* Where a defendant fails to meet a condition of the plea agreement the prosecution's obligations under the agreement cease. *Id.*

Initially, we note that Higgins did not raise this issue in the trial court prior to the termination proceeding and in fact agreed at two different review hearings, held over the course of approximately one year, to maintain the status quo in this matter and not return the children to Dinsmoore. Moreover, at no time during the review hearings did Higgins indicate to the court that she was no longer residing with Dinsmoore and that she had complied with the agreement. A party may not challenge on appeal something which she deemed proper at trial. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998).

Further, because the trial court did not make any findings with respect to whether Higgins indeed moved out of Dinsmoore's house, and relied instead on the untimely nature of her request in denying the motion to withdraw her plea, there are no factual findings for this Court to review and this issue is not preserved for appeal. *In re Zelzack, supra* at 126. Notwithstanding that this issue is not preserved, our independent review of the record reveals that Higgins' claim is without merit. There is significant evidence in the record suggesting that Higgins was indeed still residing with Dinsmoore throughout the proceeding and had thus not complied with that condition in the plea agreement. In particular, when asked at the termination hearing where she currently lived, Higgins testified that she lived at the Freeman home but claimed not to know the address. Higgins further expressed her desire to raise the children with Dinsmoore as a family as soon as these proceedings had concluded and doubted that Dinsmoore would not permit that arrangement to occur. Additionally, although Dinsmoore denied that Higgins was staying at his house and that they had a boyfriend/girlfriend relationship, he admitted that she often spent the night at his home, and that they still had a sexual relationship. On this record, we conclude that, even if this issue were preserved, Higgins' argument that the family court erred in denying her request to withdraw her no-contest plea on grounds that she moved out of Dinsmoore's home would be rejected.

Next, Higgins argues that she received ineffective assistance of counsel because the cramped condition of the courtroom in which the family court held the termination hearing prevented her from communicating effectively with her attorney and prevented her attorney from organizing documentary

materials necessary for her defense. We disagree. Higgins merely argued before the family court that difficulties in communication and organization were inevitable due to the condition of the courtroom. The record on appeal provides no indication that the size of the courtroom resulted in a breakdown of communications between Higgins and her attorney or that Higgins actually suffered any prejudice because the courtroom was too small. Therefore, Higgins has failed to establish the merits of her ineffective assistance of counsel claim. See *People v Hoag*, 460 Mich 1, 5-6; 594 NW2d 57 (1999).

Dinsmoore argues that the trial court clearly erred in terminating his parental rights to Shawna, Shannon and Harvey under MCL 712A.19b(3)(b)(ii), (c)(i), (c)(ii), and (j); MSA 27.3178(598.19b)(3)(b)(ii), (c)(i), (c)(ii), and (j).[1] We disagree.

Upon review of the record, we conclude that the family court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). There was ample evidence to support the family court's decision. Further, Dinsmoore failed to show that termination of his parental rights was clearly not in the best interests of the children. MCL 712A.19b(5); MSA 27.3178(598.19b)(5). Thus, the family court did not err in terminating Dinsmoore's parental rights to the children. *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997).

Finally, Dinsmoore argues that the family court improperly relied on hearsay evidence in reaching its termination decision. However, Dinsmoore has failed to specify which materials the family court considered that contained alleged hearsay statements. Instead, he has left it to this Court to ferret out the specific examples of inadmissible hearsay evidence upon which the family court allegedly relied. A party may not merely announce a position and leave it to the appellate court to discover and rationalize the basis for his claim. *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Accordingly, we decline to address this claim.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald

[1] The father also argues that the family court erred in terminating his parental rights under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). However, the family court's factual findings as to this subsection apply to the mother only. The record does not indicate that the family court actually terminated the father's parental rights under this subsection. In any event, because only one statutory ground is required in order to terminate parental rights, *In re Huisman*, 230 Mich App 372, 384-385; 584 NW2d 349 (1998), we would not find grounds for reversal even if the trial court had erred in its decision to terminate under this subsection.